

No. 14470

United States
Court of Appeals
for the Ninth Circuit

JOHN K. BORG,

Appellant,

vs.

THE TRIBUNE PUBLISHING COMPANY, a
Corporation,

Appellee.

Transcript of Record
In Two Volumes
Volume I
(Pages 1 to 24)

Appeal from the United States District Court
for the District of Idaho,
Central Division.

FILED

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PAUL P. O'BRIEN,
CLERK

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Answer	8
Ex. A—Item Taken from Lewiston, Idaho, Morning Tribune	17
Certificate of Clerk	23
Complaint	3
Judgment	19
Motion and Order for Special Appointment to Serve Process	7
Order Re	8
Names and Addresses of Attorneys	1
Notice of Appeal	20
Statement of Points Relied On by Plaintiff for Reversal of Judgment	22
Verdict	19
Transcript of Proceedings	25
Motion for Directed Verdict	147, 286
Offer of Proof	70
Ruling of the Court	287

	INDEX	PAGE
Witnesses, Defendants':		
Alsager, Melvin		
—direct		151
—cross		181
—redirect		214
—recross		214
Barrackman, Al		
—direct		243
—cross		250
Boas, Louis A.		
—direct		267
—cross		268
—redirect		270
Cassin, Fred		
—direct		222
—cross		231
—redirect		235, 236
—recross		236
David, Peggy		
—direct		215
—cross		219
Hamilton, Ladd		
—direct		251
—cross		260
—redirect		266

INDEX

PAGE

Witnesses, Defendants'—(Continued)

Hill, E. D.

—direct 220

Tunnicliff, R. J.

—direct 240

—cross 242

Witnesses, Plaintiff's:

Alford, A. L.

—direct41, 144

Blake, Winn

—direct 280

Boas, Louis A.

—direct29, 136

Borg, John K.

—direct44, 71

—cross 75

—redirect 104

—recross 111

Felton, Tom

—direct 282

Guernsey, Roy D.

—direct 68

	PAGE
Witnesses, Plaintiff's—(Continued)	
Huff, Laurence	
—direct	112, 275
—cross	116, 279
—redirect	117
Johnston, William F.	
—direct	43, 141
—cross	143
Martinson, Lloyd G.	
—direct	60, 272
—cross	61, 65, 274
Morgan, A. L. (Deposition)	
—direct	127
O'Donnell, J. M.	
—direct	118
—cross	121
Tunnicliff, R. J.	
—direct	122
—cross	123
—redirect	125

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MURRAY ESTES,
Moscow, Idaho;

Attorneys for Appellant.

CLEMENTS & CLEMENTS,
Lewiston, Idaho;

Attorneys for Appellee.

In the United States District Court for the District
of Idaho, Central Division

No. 1951

JOHN K. BORG,

Plaintiff,

vs.

T. C. THOMAS and THE TRIBUNE PUBLISH-
ING COMPANY, a Corporation,

Defendants.

COMPLAINT

Plaintiff complains and alleges:

I.

At all times referred to herein, the defendant Tribune Publishing Company was and is an Idaho corporation, existing under and by virtue of the laws of the State of Idaho, with its principal place of business in Lewiston, Idaho. Said corporation is the owner and publisher of a daily newspaper, known and titled as "The Lewiston Morning Tribune," which paper has a large circulation in the states of Idaho and Washington.

The defendant T. C. Thomas is a resident within the County of Latah, State of Idaho.

II.

The plaintiff, John K. Borg, has for many years heretofore been a resident of Moscow, Idaho. Said plaintiff is now, and has been since September, 1953, a resident of Pullman, Washington, and is em-

ployed as a clerk in the Washington Hotel, in Pullman, Washington. That from January, 1953, to September, 1953, and for many years prior to January, 1953, the plaintiff had been and was a Justice of the Peace, in and for Latah County, State of Idaho, and did, prior to the acts herein complained of, enjoy an excellent reputation for truth, veracity and integrity, and has been a respected citizen.

III.

The jurisdiction of this Court is founded on diversity of citizenship. The amount in controversy, exclusive of interest and costs, exceeds the amount of \$3000.00.

IV.

That the defendant Thomas on or before the 12th day of May, 1953, became the author of a written article concerning this plaintiff, which article, or quotations therefrom, was printed in the Lewiston Morning Tribune on May 13, 1953, with the consent, knowledge and authorization of the defendant Thomas, and circulated throughout the states of Idaho and Washington. That such article and publication was false and untrue, but was written, published and circulated with the intent to, and did, directly, indirectly and by innuendo, accuse the plaintiff of dishonesty, trickery, corruptness and of malfeasance and misfeasance of public office; and with the purpose of destroying plaintiff's reputation, exposing him to public hatred, contempt, ridicule and obloquy, and to deprive him of public confidence.

V.

That said article was false and untrue, particularly in the following respects:

“The meeting opened with a long and detailed review of the Estes-Shoup case by Capt. Thomas C. Thomas, commander of the University Naval ROTC unit, of which Shoup was a member.

“Captain Thomas declared that ‘I don’t like the smell of it. I don’t think we have here in this county now the proper administration of justice.’

* * *

“Estes went to the Perch, a campus restaurant, and there accosted Shoup with a pistol.

* * *

“Legal maneuvers had made it impossible for the prosecuting attorney to get a trial on that charge.

* * *

“At 9 a.m., he added the prosecuting attorney and witnesses and the court reporter appeared at the police court, normally the place where the hearing would be held. But the judge and Estes had gone in the meantime to the district courtroom to hear the case.

“‘This was a ridiculous situation,’ Thomas said.

“‘Counsel for Estes moved that the case be dismissed and it was. If this had been an honest mistake, it could have been easily rectified simply by lifting a telephone and telling the prosecuting attorney to bring his witnesses and come on over.’

* * *

“But Thomas said these things disturbed him:

* * *

“ ‘The extraordinary circumstance of dismissing the first battery charge while the prosecutor was in the regular courtroom and the judge and defendant were in another;

“ ‘Circumstances of the dismissal of the second charge against Estes;

* * *

“ ‘What to do about it? There has been no change in the local setup since December. The same faces now hold office. The same thing could take place and again we’d go through this same rigamarole. There is no way to get justice or to correct the faults in the administration of justice in Latah County without a grand jury.’ ”

VI.

That by reason of the aforesaid article and remarks of the defendant Thomas, and the publication and distribution of the Lewiston Morning Tribune of May 13, in the states of Idaho and Washington, and in miscellaneous other areas, plaintiff has been deprived of public confidence, has suffered embarrassment, humiliation and mental agony, has been held in contempt, calumny, ridicule, and such publication has caused plaintiff’s friends and acquaintances of years standing to avoid the plaintiff, all to his damage in the sum of \$75,000.00.

Wherefore, plaintiff prays for judgment against the defendants T. C. Thomas and the Tribune Pub-

lishing Company, jointly and individually, in the sum of \$75,000.00; for his costs and disbursements herein; and for such other and further relief as to the Court shall seem meet and proper.

J. P. TONKOFF,

ESTES & FELTON,

By /s/ MURRAY ESTES,

Attorneys for Plaintiff.

Duly verified.

[Endorsed]: Filed November 10, 1953.

[Title of District Court and Cause.]

MOTION AND ORDER FOR SPECIAL
APPOINTMENT TO SERVE PROCESS

Comes now the undersigned, of counsel for plaintiff in this cause, and moves for the appointment of Clarence Kyle, a Deputy Sheriff for Nez Perce County, Idaho, or J. F. Jordan, a Deputy Sheriff for Lahah County, Idaho, as individual citizens, to serve summons and complaint in this cause upon the defendants; they, or either of them, to make return to the Clerk of the above-entitled Court upon completion of service.

Dated this 9th day of November, 1953.

/s/ MURRAY ESTES.

ORDER

Upon the above motion, and good cause appearing therefor, it is hereby ordered that Clarence Kyle, a resident of Lewiston, Idaho, or J. F. Jordan, a resident of Moscow, Idaho, be, and they hereby are appointed as individual citizens to serve summons and complaint in this cause upon the defendants; return of service to be made to the Clerk of this Court.

Dated this 16th day of November, 1953.

/s/ CHASE A. CLARK,

United States District Judge.

[Endorsed]: Filed November 16, 1953.

[Title of District Court and Cause.]

ANSWER

The defendant, The Tribune Publishing Company, a corporation, answers plaintiff's Complaint as follows:

First Defense

The Court lacks jurisdiction of the subject matter of the action or the parties thereto.

Second Defense

The Complaint fails to state a cause of action against the defendant upon which relief can be granted.

Third Defense

For answer to plaintiff's Complaint, the defendant admits, denies, and alleges as follows:

I.

For answer to paragraph I, the same is hereby admitted.

II.

For answer to paragraph II, the defendant admits that portion beginning with the word: "The," as the first word in the first line and ending with the word: "Idaho," which appears as the sixth word in line two and reading as follows:

"The plaintiff, John K. Borg, has for many years been a resident of Moscow, Idaho."

Admits that portion beginning with the word: "that," which appears as the third word in the fifth line and ending with the figures: "1953" appearing at the end of line six, and beginning with the word: "the," which appears as the ninth word in line six, and ending with the word: "Idaho," which appears as the first word in the eighth line, all of which admission reads as follows:

"that from January, 1953, to September, 1953, the plaintiff had been and was a Justice of the Peace in and for Latah County, State of Idaho."

Denies, generally and specifically, that portion beginning with the word: "Said," which appears as the seventh word in line two, and ending with the

word: "Washington," which appears as the last word in line three, and reading as follows:

"Said plaintiff is now, and has been since September, 1953, a resident of Pullman, Washington."

Save and except as herein specifically admitted and denied, the defendant has no knowledge or information sufficient to form a belief upon each and every other matter and thing in said paragraph contained, and, therefore, denies the same.

III.

For answer to paragraph III, the defendant denies, generally and specifically, each and every allegation, matter, and thing therein contained, and the whole thereof; Except, the defendant admits that the amount in controversy, exclusive of interest and costs, exceeds the amount of \$3,000.00.

IV.

For answer to paragraph IV, the defendant denies, generally and specifically, each and every allegation, matter, and thing therein contained, and the whole thereof.

V.

For answer to paragraph V, the defendant denies, generally and specifically, each and every allegation, matter, and thing therein contained, and the whole thereof; Except, the defendant admits that the quotations set forth in paragraph V of plaintiff's Complaint were printed and published in The

Lewiston Morning Tribune on May 13, 1953, as parts of an article, the whole of which is hereunto attached, marked Exhibit "A," and by reference made a part hereof.

Further answering said paragraph V, the defendant alleges that said quotations are only extracts from the article and do not constitute the entire article and should be read with the rest of the article, and that the entire article must be read and considered in order to ascertain the purpose, meaning, and intent of the article.

VI.

For answer to paragraph VI, the defendant denies, generally and specifically, each and every allegation, matter, and thing therein contained, and the whole thereof; and specifically denies that the plaintiff, John K. Borg, has been damaged in the sum of \$75,000.00, or any sum whatsoever.

VII.

The defendant denies each and every allegation in said Complaint contained not expressly admitted to be true.

Fourth Defense

For a Separate and Affirmative Defense, the Defendant, The Tribune Publishing Company, Alleges as Follows:

That at all times referred to in plaintiff's Complaint, the defendant, T. C. Thomas, was a Captain in the United States Navy, assigned to duty at the

University of Idaho in Moscow, Idaho, as a professor of Naval Science, and as Commanding Officer of the Naval Reserve Officers' Training Corps Unit at Moscow, Idaho. That the Naval Reserve Officers' Training Corps is a national program for the education and training of citizens to qualify them to serve as officers in the United States Navy and Marine Corps. That during the above-mentioned period, one Richard Shoup, was duly and regularly enrolled as a member of the Moscow Unit of the Naval Reserve Officers' Training Corps, and under the command and jurisdiction of the said defendant, T. C. Thomas, who was responsible for his educational progress and training.

That on or about December 14, 1952, the above-mentioned Richard Shoup became involved in an altercation and combat with one, Murray Estes, in Moscow, Idaho, which resulted in:

1. Estes being charged in the Probate Court of Latah County, Idaho with the crime of: "Assault with a Deadly Weapon—a Felony."

2. Estes being dismissed from the charge filed in the Probate Court and transferred to the Justice Court of the Second Justice Precinct of Latah County, State of Idaho, by John K. Borg, Justice of the said Court, who is the plaintiff in this action.

3. Estes being charged in the Justice Court of the Second Justice Precinct of Latah County, State of Idaho, before Kent Power, Justice of the Peace.

with the offense of: "Assault with a Deadly Weapon."

4. Estes being dismissed from the charge in the Justice Court of the Second Precinct before Kent Power, Justice of the Peace, by Justice of the Peace John K. Borg, who is the plaintiff in this action, before whom said case was transferred.

5. Estes being charged in the Justice Court of the Second Justice Precinct of Latah County, State of Idaho, before Kent Power, Justice of the Peace, with the offense of: "Battery."

6. Estes pleading guilty in the Probate Court of Latah County, Idaho to the charge of Battery, which proceeding was initiated in the Justice Court of the Second Justice Precinct of Latah County, State of Idaho, and being adjudged by said Probate Court to pay a fine of \$100.00 and costs of the prosecution in the sum of \$3.00.

7. Shoup being charged in the Justice Court of the Second Justice Precinct of Latah County, State of Idaho, before Kent Power, Justice of the Peace, with the crime of: "Attempt to Compound a Crime—a Felony."

8. Shoup being dismissed from the charge set forth in the preceding subdivision by Kent Power, Justice of the Peace.

That public interest in and discussion of the institution and disposition of the above-mentioned official, public, judicial proceedings caused a large number of citizens of Latah County, Idaho to peti-

tion the authorities of said County to convene a Grand Jury for an investigation of said proceedings and that, in addition thereto, a great number of citizens held a public meeting in the High School in Moscow, Idaho, on May 12, 1953, where said proceedings and the calling of a Grand Jury to investigate the same, became a matter of public discussion.

That the quotations set forth in paragraph V of plaintiff's Complaint are only parts of an article printed and published in the Lewiston Morning Tribune on May 13, 1953, the whole of which is hereunto attached as Exhibit "A":

That said article was a full and fair report of a public meeting of citizens held in the Moscow High School in Moscow, Idaho on May 12, 1953, for the purpose of discussing the subjects and proceedings of public, official, judicial proceedings theretofore instituted and pending in the Courts of Latah County, State of Idaho.

That the language quoted in paragraph V of plaintiff's Complaint was spoken at said meeting by the defendant, Thomas, and was an expression of his own opinion upon public, official, judicial proceedings, and was made for the purpose of acquainting the citizens and taxpayers of Latah County with matters, which he believed to be, and which were of public interest and for the good and welfare of the citizens of said County and were made without malice or ill feeling toward the plaintiff and that

nothing was said by him for the purpose of injuring the plaintiff in any manner whatsoever.

That the article attached hereto as Exhibit "A" constitutes a true and fair report of the public meeting hereinabove referred to and each and all of the words and statements therein contained, in their natural and ordinary meaning, are substantially true in substance and in fact, and in so far as the words consist of expressions of opinion, they are fair and impartial comments upon the public, official, judicial proceedings referred to, made in good faith, and without malice and upon the said facts, which are a matter of public interest and concern, and were spoken and published for the public benefit and are, therefore, privileged.

That in publishing the matters appearing in Exhibit "A," the defendant, Tribune Publishing Company, believed that the matters and things therein were true and of such general interest to the public to justify its publication and make it incumbent upon it, as a newspaper, to publish the same.

That in publishing said Exhibit "A," the Tribune Publishing Company acted with full right to do so for the benefit of the entire community of Moscow, Idaho and the public in general and under privilege.

That in alleging in this affirmative defense that the statements of fact contained in said Exhibit "A" are substantially true, defendant has reference to every statement of fact in the aforesaid Exhibit "A" and relating to plaintiff and the conduct of

the plaintiff with respect to the matters therein referred to.

Fifth Defense

For a Separate and Affirmative Defense, the Defendant, Tribune Publishing Company Alleges as Follows:

I.

That each and every of the statements quoted in paragraph V of plaintiff's Complaint are true and correct.

Wherefore, this answering defendant prays that plaintiff's action be dismissed, that he take nothing thereby, and that the defendant have and recover its costs and disbursements necessarily expended therein, and that the defendant be granted such other and further, general relief as to the Court may seem warranted upon a hearing.

CLEMENTS & CLEMENTS,

By /s/ V. R. CLEMENTS,
Attorneys for Defendant, The Tribune Publishing
Company.

Grand Jury Demanded

By LADD HAMILTON
(Tribune Staff Writer)

MOSCOW — The most famous legal case in recent Moscow history, which apparently had slimmered down last week, boiled over again Tuesday night amid demands for a grand jury investigation.

About 200 Latah County residents gathered at Moscow High School to protest what one of them termed "a miscarriage of justice" growing out of an incident at a University of Idaho Campus cafe last Dec. 14, involving Richard Shoup, a university student, and Murray Estes, Moscow attorney.

Shoup had charged Estes, after the Dec. 14 affair, with assault with a deadly weapon, and after a long series of legal maneuvers, Estes pleaded guilty last week to a reduced charge of battery and, last week, also, a case which Estes has brought against Shoup, charging an attempt to compound a felony (bribery), was dismissed.

Tuesday night's public meeting came about as the result of an earlier refusal of District Judge Jack McQuade to call a grand jury to investigate possible evidences of injustices during the four-month course of the case.

Among other things, the group:

1. Formed a permanent organization called the Latah County Good Government Association;
2. Agreed that a nominating committee be named to put forward officers, draw up an organizational plan and arrange for further meetings;
3. Authorized D. S. Jeffers, Moscow, chairman of the meeting, to appoint a committee which will poll county residents on the question whether they want a grand jury impeded;
4. Requested Jeffers to inform McQuade that it was the desire of the group that a grand jury be called.

The meeting opened with a long and detailed review of the Estes-Shoup case by Capt. Thomas C. Thomas, commander of the University Naval ROTC unit, of which Shoup was a member.

Captain Thomas declared that "I don't like the smell of it. I don't think we have here in this county now the proper administration of justice."

He said the difficulty involving Estes and Shoup began at a party at the downtown Moscow Ad Club which Estes and Maury O'Donnell, who was then prosecuting attorney, both attended.

Shortly after this party, Captain Thomas said, Estes went to the Perch, a campus restaurant, and there accosted Shoup with a pistol. He did not fire the weapon. The proprietor of the cafe intervened and called police.

Didn't Take Gun

The first police officer who arrived, Captain Thomas said, allowed Estes to depart "and did not take his pistol from him." The

second officer, he said, arrived and took young Shoup to jail, where he was interrogated "for quite a considerable time."

"It was then thoroughly established, Thomas said, "that he was completely innocent, and later Estes admitted that it had been a case of mistaken identity."

Thomas said that Shoup had been dissuaded on numerous occasions from filing any charges against Estes. He pointed out that the first charge was not filed against Estes until about four weeks after the incident had occurred. It was not filed, he said, until Melvin Alsager had replaced O'Donnell as prosecuting attorney.

"Within an hour after Alsager took office the charge was filed," Thomas said. But he added that subsequent legal maneuvers had made it impossible for the prosecuting attorney to get a trial on that charge. He said that it was brought in justice court, scheduled for a hearing at 9 a.m. on the morning of Jan. 15. At 8 a.m. that morning, Thomas said, Alsager called the judge and told him that he would be ready at 9.

At 9 a.m., he added the prosecuting attorney and witnesses and the court reporter appeared at the police court, normally the place where the hearing would be held. But the judge and Estes had gone in the meantime to the district courtroom to hear the case.

"This was a ridiculous situation," Thomas said.

"Counsel for Estes moved that the case be dismissed and it was. If this had been an honest mistake it could have been easily rectified simply by lifting a telephone and telling the prosecuting attorney to bring his witnesses and come on over."

A second felony charge was filed a few days later the captain said, but this was also dismissed on the ground that there was insufficient evidence upon which to bind Estes over.

"And in the meantime," the captain added, "what has happened to the boy?"

"The strain of the hearing and other legal rigamarole had gotten him down and at mid-year Shoup did badly at his exams. We would have had to drop him from Naval ROTC for poor grades, but with the full concurrence of President (J.E.) Buchanan, we sent a plea to the Navy Department that he be allowed to remain with us for one more term.

"At the end of January, the individual who caused the trouble was scott free and the victim was subject to dismissal from the Navy and in danger of losing his chance to become a Naval officer. It was simply not right."

Later, he said, Shoup's parents came here from McKeesport, Penn., and it was agreed then that a simple battery action would be brought against Estes.

This third charge was filed shortly after Easter.

Captain Thomas said that McQuade had attempted to hold a "quiet, closed trial." Alsager was told to bring in the boy and no other witnesses, Thomas said.

(Continued on Page 5)

Group Demands Grand Jury In Estes Case

(Continued from Page 12)

Alsager had first agreed, but then "when he realized what was happening, he properly refused to go along with it."

The next day a charge was filed against Shoup alleging that he had attempted to compound a felony. Thomas said this charge was "phony and false" and could not have stood up in court.

He said that on April 23 McQuade held a conference in his chambers and that McQuade had dissuaded Thomas from allowing his secretary to take notes. Thomas said he requested that the court reporter take notes and was again dissuaded. Nothing came of that conference, Thomas said.

He said that on the following day he saw an article in the Moscow Daily Idahonian which quoted McQuade as saying that an agreement had been reached by all the principals in the case and that there was no justification for calling a grand jury.

He said the story quoted McQuade as saying that attorneys for both sides objected to the expense of a grand jury except as a last resort. Thomas said that was erroneous, that no such agreement was reached.

On May 5, he said, there was another effort to hold a quiet trial, but he added that Alsager again refused, saying a public trial had been set for May 6 and that was when he intended to have it.

Estes appeared privately before the judge, pleaded guilty to the charge of battery and was fined \$100. After Estes' conviction, the charge against Shoup was dismissed.

"At long last," Captain Thomas said, "we had Shoup freed."

But Thomas said these things disturbed him:

"The failure of the police to arrest Estes on Dec. 14 or to take away his pistol;

"The extraordinary circumstance of dismissing the first battery charge while the prosecutor was in the regular courtroom

and the judge and defendant were in another;

"Circumstances of the dismissal of the second charge against Estes;

"The reasons for the unusual steps which McQuade took to avoid calling a grand jury . . ."

"What to do about it? There has been no change in the local setup since December. The same faces now hold office. The same thing could take place and again we'd go through this same rigamarole. There is no way to get justice or to correct the faults in the administration of justice in Latah County without a grand jury."

Captain Thomas retired amid heavy applause.

McQuade then declared that Captain Thomas had put forward only the facts which were favorable to his side. And McQuade heatedly denied that he had said what the Moscow newspaper quoted him as saying about the grand jury.

He also denied that he would not allow notes to be taken in his conference with the parties to the case.

He said he had told Thomas it was to be an informal meeting "to get rid of these cases in an orderly manner. It has been my observation that people are reluctant to talk when someone is making notes. I didn't deem it necessary to have the reporter there.

He also said that Thomas had not pressed him for provision to have notes taken, but had asked him merely "would you rather I didn't?"

McQuade said "I repeated throughout the conference that I had called it for the purpose of enlisting their aid in ending this farce that was growing like a mountain. I said it will have a serious effect on the community and the university. As for the grand jury, I hadn't made up my mind."

McQuade said that during this conference he told the attorneys that "I will call the grand jury unless you, Estes, and you, Alsager, stop playing around. I said if you don't do something I'll not only call the grand jury, but I will institute disbarment proceedings against both of you."

"As far as I am concerned, I have not abandoned consideration of the grand jury. I carry no ban-

ner for any side in this case. But I am afraid of injuring a number of innocent people as I know is sometimes the case with a grand jury."

At this point Dr. Hugh Burgess of Moscow offered a motion that the Latah County Good Government group be formed. The motion passed 132 for and 8 against after a brief discussion.

A motion then was made that Jeffers, as temporary chairman, name a nominating committee to include himself, Malcom Neely, the Rev. Carman Mell, Moscow minister, William McQuary, Kendrick newspaper publisher, and Jim Broyles, Potlatch farmer. This motion carried unanimously.

Hints At Other Cases

Mrs. Bernice Brigham, Genesee, declared that "this is not the only case of miscarriage of justice here" and she added that "it is only an indication of the type of justice Latah County has had for a long time."

Dr. R. E. Hosack, University instructor, said that he had been "disturbed by a feeling of uncertainty on the part of Moscow residents over the way local justice has been handled."

"I am also deeply disturbed when a judge throws cold water in the face of the ancient and honorable institution of the grand jury. Grand juries can take the kind of evidence McQuade said he cannot take. I think a grand jury would clear the air."

Clifford Dobler, University law teacher, said that "I don't teach about grand juries but last week I got hold of a book called the Idaho Code. I found that 16 grand jurors get four dollars a day for every day they meet plus 15 cents a mile one way for travelling money." Thus, he said, the grand jury would not be so expensive as McQuade had intimated.

And he added that "the only people who could be injured are the guilty parties."

McQuade offered a correction. He said that grand jurors now get \$6 daily plus 25 cents mileage, which would amount to about \$96 daily while they were in session.

He said he had just returned from South Idaho, where he had observed grand juries in action. In one county, he said, seven men were indicted and not one of them was convicted. But he said that in

order to meet their legal expenses, they had all mortgaged their homes, borrowed on their life insurance, borrowed from relatives and finally had been given a sum of \$13,000 which was gathered by public subscription.

"That's what I mean when I say innocent people can be hurt."

'Immunity' Cited

Dr. Paul Eke, former University instructor, said "there is a feeling in this community that people in certain classes are immune to the law. The best thing for us would be a complete change from top to bottom."

Hosack declared that it would be worth \$96 plus expenses to clear the good name of Latah County and he then moved that a group be appointed to canvass the county on the question. The motion passed 63 to 35.

The Rev. W. W. Prall, Presbyterian minister, urged further investigation. "Let's find out first what a grand jury can do," he said. "To be perfectly frank, all I have heard is rumor and I doubt if you can investigate a rumor."

Alsager said a grand jury does have greater power than a prosecuting attorney.

"My difficulty with the Estes case," he went on, "has been mostly with the lower court justices, who seem to be cooperating with the defendant more than with me. I don't mean they should side with me, but they should help me get a case to the right court at the right time."

Dr. Prall said that "I don't believe that at the moment there is anything on which the judge could impanel a grand jury."

To which McQuade replied, "Dr. Prall has put a finger on it. All the petitions in the world won't find a man guilty. The only thing that means anything is evidence. I'm not going to call the grand jury. I'm not going to take a chance on having people hurt."

Mrs. Helen Howard asked him, "If Captain Thomas' facts are true would you accept that as sufficient evidence for the calling of a grand jury?"

McQuade replied, "If they are all true and there are no explanatory facts which neutralize them, it would be proper to bring in a grand jury. But the captain has brought in only one side of this case."

[Endorsed]: Filed March 17, 1954.

[Title of District Court and Cause.]

VERDICT

We, the jury in the above-entitled cause, find for the defendant, The Tribune Publishing Company, a corporation, and against the plaintiff.

/s/ WAYNE A. JOHNSON,
Foreman.

[Endorsed]: Filed April 8, 1954.

In the United States District Court for the District
of Idaho, Central Division

No. 1951

JOHN K. BORG,

Plaintiff,

vs.

THE TRIBUNE PUBLISHING COMPANY, a
Corporation,

Defendant.

JUDGMENT

This cause came on for trial before the Court and jury on April 5, 1954, et seq., both parties appearing by counsel, and the issues having been duly tried, and the Court having directed the jury to render a verdict for defendant,

Wherefore, by virtue of the law, and by reason of the premises aforesaid, it is Ordered and Adjudged that the plaintiff take nothing upon his complaint herein, and that the defendant, The Tribune Pub-

lishing Company, a corporation, have and recover from the plaintiff its costs and disbursements incurred herein, taxed in the sum of \$104.04.

Dated this 8th day of April, 1954.

[Seal] /s/ ED M. BRYAN,
 Clerk.

[Endorsed]: Filed April 8, 1954.

In the United States District Court for the District
of Idaho, Central Division
No. 1950

JOHN K. BORG,
 Plaintiff,
 vs.

LOUIS A. BOAS and THE NEWS-REVIEW
PUBLISHING COMPANY, INC.,
 Defendants.

No. 1951

JOHN K. BORG,
 Plaintiff,
 vs.

THE TRIBUNE PUBLISHING COMPANY, a
Corporation,
 Defendant.

NOTICE OF APPEAL

To Louis A. Boas and The News-Review Publishing
Company, Inc.. Defendants in Action No. 1950,
and to Maurice H. Greene, Attorney for said

Defendants; and to The Tribune Publishing Company, a Corporation, Defendant in Action No. 1951, and to Clements & Clements, Attorneys for Said Defendant:

You, and each of you, will please take notice that the above-named plaintiff, John K. Borg, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from those certain judgments made and entered in the above-entitled Court, and causes, on the 8th day of April, in favor of the defendants, and against the plaintiff, in each of said actions.

Notice of appeal in the above-entitled causes is combined for the reason that said actions were consolidated for trial, and a single record of evidence was adduced, which is applicable to said actions jointly.

Dated this 7th day of May, 1954.

J. P. TONKOFF,
MURRAY ESTES,

By /s/ MURRAY ESTES,
Attorneys for Plaintiff.

[Endorsed]: Filed May 7, 1954.

[Title of District Court and Cause.]

No. 1950 and No. 1951

STATEMENT OF POINTS RELIED ON BY
PLAINTIFF FOR REVERSAL OF JUDGMENT

Comes now the plaintiff in the above-entitled causes, which were consolidated for trial, and files the following statement of points, relied upon by the plaintiff for reversal of the judgment entered in said actions by the United States District Court, for the District of Idaho, Central Division, on the 8th day of April, 1954.

I.

The Court erred in rejecting Exhibits Nos. 2, 3, 4 and 5, offered in evidence by the plaintiff.

II.

The Court erred in sustaining defendant's objections to plaintiff's offer of evidence to establish the circulation of the articles complained of, and the impression and understanding created by such articles upon the readers thereof.

III.

The Court erred in permitting into evidence Exhibit No. 23.

IV.

The Court erred in permitting into evidence Exhibit No. 12.

V.

The Court erred in directing the jury to return a

verdict in favor of the defendants and against the plaintiff, and in directing the entry of judgment in accordance with such verdict.

Dated this 8th day of May, 1954.

J. P. TONKOFF,

MURRAY ESTES,

By /s/ MURRAY ESTES,

Attorneys for Plaintiff.

[Endorsed]: Filed May 12, 1954.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,

District of Idaho—ss.

I, Ed. M. Bryan, Clerk of the United States District Court for the District of Idaho, do hereby certify that the foregoing papers are that portion of the original files designated by the parties and as are necessary to the appeal under Rule 75 (RCP), to wit:

1. Complaint.
2. Answer.
3. Verdict.
4. Judgment.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said court this 31st day of July, 1954.

CLERK.

[Endorsed]: No. 14470. United States Court of Appeals for the Ninth Circuit. John K. Borg, Appellant, vs. The Tribune Publishing Company, a Corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Idaho, Central Division.

Filed August 4, 1954.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.